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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

~~No. A-55~~

71 - 226

JERSEY CITY EDUCATION ASSOCIATION, LOUIS T. SCIALLI, THOMAS FAVIA, SARAH GROCHOW, GAIL ROMANOWSKI, DORIS E. FILLIPPONE, ETHEL P. BROWN, DANIEL CUPO, GAIL HALL, BARBARA SCHNEIDER and ROBERT ROGENSTEIN, individually and as Officers and Members of the Executive Board of the Jersey City Education Association, and FRANK AMARATO, MARY DAVIS, MARGARET DEL PRETE, DIANNE FERRARA, BERNICE MACCHIA, NEIL PAGANO, MICHAEL WARJANKA, MAE McCOMB, MYRA DANIEL,

Petitioners,

vs.

STATE OF NEW JERSEY,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	PAGE
STATEMENT OF THE CASE	1
POINT I—The State's right to prohibit strikes by public employees is not violative of petitioners' rights under the First and Fourteenth Amendments, and does not present a substantial federal question for examination of the right to organize	4
POINT II—The injunctive order was not unconstitutional for overbreadth and vagueness and did not prohibit constitutionally mandated actions	9
POINT III—The findings of the trial Court that petitioners had violated the injunctive order was supported by the evidence and presents no constitutional question	11
POINT IV—Each defendant below had adequate notice of the order to show cause	12
POINT V—Equal protection of the laws and due process guaranteed by the Fourteenth Amendment were not denied petitioners by the imposition of a fine of $10,000 on the New Jersey Education Association and the Court below was not limited to the maximum fine set forth in N.J.S. 2A:169-4	16
CONCLUSION	19

Cases Cited

Block, In re, 50 N. J. 494 (1967) 4, 12

Bloom v. Illinois, 391 U. S. 194 (1967) 16, 17

PAGE

Board of Education v. New Jersey Education Ass'n., et al., 53 N. J. 29, 247 A. 2d 867 (1968) 4-6

Buehrer, In re, 50 N. J. 501 (1967) 12, 14, 17

Cheff v. Schnackenberg, 334 U. S. 373 (1966) 17

Cross Co. v. United Automobile Workers, 377 Mich. 202, 139 N. W. 2d 694 (1966) 14

Cunningham v. Maroney, 397 F. 2d 724 (3rd Cir. 1968), cert. den. 393 U. S. 1045 (1969) 11

Delaware River and Bay Authority v. International Organization of Masters, Mates and Pilots, 45 N. J. 138, 211 A. 2d 789 (1965) 4, 6, 8

Donevero v. Jersey City Incinerator Authority, 75 N. J. Super. 217, 182 A. 2d 596 (Law Div. 1962), rev'd on other grounds 4, 5

Frank v. United States, 395 U. S. 147 (1968) 17

Garrigan v. U. S., 163 F. 16 (7th Cir. 1908), cert. denied 214 U. S. 514 (1909) 14

Giboney v. Empire Storage Co., 336 U. S. 490 (1948) 7

Hart Cotton Mills, Inc. v. Abrams, et al., 231 N. C. 431, 578 S. E. 2d 803 (1950) 14

Head v. Special School District No. One, 182 N. W. 2d 887 (Minn. Sup. Ct. 1971) 6, 12

International Brotherhood, etc. v. Vogt, Inc., 354 U. S. 284 (1957) 7

Jefferson City Teachers Association v. Board of Education, 463 S. W. 2d 627 (Ky. Ct. App. 1971) 6

Kirker v. Moore, 308 F. Supp. 615 (S. D. W. Va. 1970) 5

PAGE

McAleer v. New Jersey Incinerator Authority, 79 N. J. Super. 142, 190 A. 2d 891 (App. Div. 1963).... 4

McGowan v. Maryland, 366 U. S. 420 (1961)..... 19

Mechanic v. Gruensfelder, 461 S. W. 2d 298 (Mo. 1970) 14

Minneapolis Federation of Teachers v. Obermeyer, 275 Minn. 347, 147 N. W. 2d 358 (1966)..... 6

Mullane v. Central Hanover B. & T. Co., 331 U. S. 306, 70 S. Ct. 652, 94 L. Ed. 895 (1949)..... 15

New Jersey Turnpike Authority v. American Federation of State Employees, 83 N. J. Super. 389, 200 A. 2d 134 (Ch. Div. 1964).....4, 6, 8

Norwalk Teacher's Association v. Board of Education, 138 Conn. 269, 83 A. 2d 482 (1951)..... 6

Pawtucket v. Parent Teacher's Alliance, 87 R. I. 364, 141 A. 2d 624 (R. I. Sup. Ct. 1958)..... 6

Prouzan v. Board of Education, 25 Misc. 2d 945, 209 N. Y. S. 2d 966 (Spec. Term 1960), aff'd, 12 A. D. 2d 923, 215 N. Y. S. 2d 718 (Sup. Ct. 1st Dept. 1961), aff'd, 9 N. Y. 2d 911, 176 N. E. 2d 96, 217 N. Y. S. 2d 86 (Ct. App. 1961)..... 12

Railway Mail Association v. Cordi, 293 N. Y. 315, 56 N. E. 2d 721 (1944), aff'd, 326 U. S. 88 (1945).... 5, 6

Rankin v. Shanker, 23 N. Y. 2d 111, 295 N. Y. S. 2d 625, 242 N. E. 2d 802 (Ct. App. 1968)..... 6, 17

Rudikoff v. Byrne, 101 N. J. Super. 29 (Law Div. 1968) 15

State v. Standard Oil Co., 5 N. J. 281 (1950), aff'd, 341 U. S. 428 (1951)..... 15

PAGE

Thornhill v. Alabama, 310 U. S. 88 (1940) 6

Thompson v. City of Louisville, 362 U. S. 199, 80 S. Ct. 624, 4 L. Ed. 2d 654 (1960) 11

U. S. v. Harris, 367 F. 2d 826 (2nd Cir. 1966) 17

U. S. v. United Mine Workers, 330 U. S. 258 (1947) .. 8, 18

Williams v. Peyton, 414 F. 2d 776 (4th Cir. 1969) 11

United States Constitution Cited

First Amendment 4, 7

Fourteenth Amendment 4, 16

New Jersey Constitution Cited

1947—

Article 1, Paragraph 19 ..... 4, 9

Statute Cited

N.J.S. 2A:169-4 16

Rule Cited

Rule 4:52-4 13

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Petitioners,

vs.

STATE OF NEW JERSEY,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

Statement of the Case

Petitioners seek a Writ of Certiorari to review a judgment entered in the Appellate Division of the Superior

Court, on May 21, 1971 reported in 115 N. J. Super. 42, 278 A. 2d 206 (App. Div. 1971), which affirmed a summary conviction for contempt of the Chancery Division of the Superior Court of New Jersey. The Supreme Court of New Jersey denied certification on July 7, 1971, 58 N. J. 603 (1971). On July 23, 1971, Mr. Justice Brennan ordered a stay of the execution of the judgment pending the present petition.

The entire matter was precipitated by a strike of Jersey City teachers and the Jersey City Education Association commencing on or about February 9, 1970.

On February 8, 1970, the membership of the Jersey City Education Association voted to strike on Monday, February 9, 1970, the Jersey City School System (R. 195-4 to 197-22).

On February 9, 1970, of 1743 faculty members in the Jersey City School System, only 288 teachers attended work (R. 86-1 to 6). At 11 A.M. that day, an Order to Show Cause and restraint was issued by Hon. John J. Lynch and was served the following day upon each of the defendants named in such Order. In addition, the Order to Show Cause was published in both the Hudson Dispatch and the Jersey Journal newspapers (R. 200-19 to 25; R. 202-12 to 13).

On February 13, 1970, *nine* of the defendants herein, who were not named in the original Order to Show Cause but who had received notification of the restraint against participation in the strike were observed walking in front of School No. 12. These teachers did not attend school between February 9 and March 4, 1970 (R. 342-5 to 11).

On February 12, 1970, Judge Lynch issued an Order stating that each of the defendants named in the Order

to Show Cause was charged with contempt of Court in that on February 11, 1970, after being served with copies of Complaint and Order to Show Cause, they did refuse to desist from striking. An Order for arrest of these individuals was also issued.

On February 19, 1970, Judge Lynch issued an Order for arrest as to the other nine defendants herein charging contempt of Court in that they, on February 13, 1970, after having been informed of the injunction contained in the Order of February 9, 1970, participated in a teacher strike.

On March 18, 1970, Judge Lora found those defendants named in original Order to Show Cause guilty of contempt for failure to obey the injunctive Order of February 9, 1970. A fine of $10,000.00 was imposed on the Jersey City Education Association. Execution of judgment was stayed pending appeal.

On the same day, Louis Scialli, President of the Jersey City Education Association was found guilty of contempt and sentenced to three months in Hudson County Penitentiary, two months of which were suspended, plus a $500.00 fine, and a one-year probation. This sentence was stayed pending appeal.

In addition, each defendant named in the original Order to Show Cause of February 9, 1970 was sentenced to three months in Hudson County Penitentiary (one month to be in actual custody) plus a $500.00 fine.

The remaining individuals were each sentenced to thirty days in the County Jail, twenty days suspended, and fined $200.00 each; except Amarato, who was sentenced to thirty days in County Jail, fifteen days suspended, and fined $250.00.

POINT I

The State's right to prohibit strikes by public employees is not violative of petitioners' rights under the First and Fourteenth Amendments, and does not present a substantial federal question for examination of the right to organize.

It is clear that in New Jersey, as in most other states, public employees, including teachers, do not have the right to strike or picket against the government, whether federal, state or a political subdivision of the state. *Board of Education* v. *New Jersey Education Ass'n., et al.,* 53 N. J. 29, 247 A. 2d 867 (1968); *In re Block,* 50 N. J. 494 (1967). See also *Delaware River Authority* v. *International Organization of Masters, Mates and Pilots,* 45 N. J. 138, 211 A. 2d 789 (1965); *Donevero* v. *Jersey City Incinerator Authority,* 75 N. J. Super. 217, 182 A. 2d 596 (Law Div. 1962), rev'd on other grounds; *McAleer* v. *New Jersey Incinerator Authority,* 79 N. J. Super. 142, 190 A. 2d 891 (App. Div. 1963); *New Jersey Turnpike Authority* v. *American Federation of State Employees,* 83 N. J. Super. 389, 200 A. 2d 134 (Ch. Div. 1964).

A right to strike need not necessarily be an inherent element of the right to organize, and the New Jersey courts have recognized the distinction between public and private employment. *Board of Education* v. *New Jersey Education Ass'n. et al., supra.* Article 1, para. 19, of the New Jersey Constitution, adopted in 1947, provides:

> Persons in *private emploment* shall have the right to organize and *bargain collectively.* Persons in *public* employment shall have the *right to organize,* present to and make known to the State or any of its political subdivisions or agencies, their griev-

> ances and proposals through representatives of their own choosing. (Emphasis supplied.)

Thus, the legislature recognized the legitimate distinction between public and private employment, and the court (which has the responsibility of interpreting the New Jersey Constitution) cannot infer from this provision that the Legislature intended to depart from the common law rule that strikes by public employees are illegal. *Board of Education* v. *New Jersey Education Ass'n et al., supra,* at 46, 247 A. 2d at 876; *Donevero* v. *Jersey City Incinerator Authority, supra,* at 224, 182 A. 2d at 600, where the court in interpreting that section of the New Jersey Constitution held:

> This provision does not, in terms, confer any right on the part of public employees to strike. It was clearly the understanding and intention of the Constitutional Convention, which drafted the basic State Charter, that no such right to strike on the part of public employees was to be implied from the language used. In this respect, the then existing state of the law was not to be altered. See: *1 Proceedings of the New Jersey Constitutional Convention* of 1947, *p.* 661.

See also, *Kirker* v. *Moore,* 308 F. Supp. 615 (S. D. W. Va. 1970).

Clearly, the Legislature sought to make this distinction in the respective rights of private and public employees by not giving the latter the right to bargain collectively. It is well settled that the concept of collective bargaining includes the right to strike and other aspects of the private employer-employee relationship. See *Railway Mail Association* v. *Cordi,* 293 N. Y. 315, 56 N. E. 2d 721

(1944), aff'd 326 U. S. 88 (1945); *Delaware River Authority* v. *International Organization of Masters, etc., supra,* at 147-48, 211 A. 2d at 794; *New Jersey Turnpike Authority* v. *American Federation of State Employees, supra,* at 398, 200 A. 2d at 138-39. There is no constitutional prohibition preventing teachers from organizing under the banner of the New Jersey Education Association for the purpose of collective action in the presentation of grievances and proposals. They may not, however, achieve that end by coercive methods such as strikes, which would unlawfully halt the operation of the schools and adversely affect the public health, safety, and welfare. No constitutional issue is raised by this interpretation of the New Jersey Constitution.

The right of free speech is constitutionally subject to limitation by legitimate interests of the state which require such action. *Thornhill* v. *Alabama,* 310 U. S. 88, 104-06 (1940). It is clear that the Legislature, acting under police powers, may prohibit strikes in certain fields of endeavor when the interests of public health, safety, and welfare are involved. Teachers, as public employees, in whom the State has an appreciable interest, do not have the constitutional right to strike. See *Jefferson City Teachers Association* v. *Board of Education,* 463 S. W. 2d 627 (Ky. Ct. of App. 1971); *Head* v. *Special School District No. One,* 182 N .W. 2d 887 (Minn. Sup. Ct. *et al., supra; Rankin* v. *Shanker,* 23 N. Y. 2d 111, 295 N. Y. S. 2d 625, 242 N. E. 2d 802 (Ct. App. 1968); *Minneapolis Federation of Teachers* v. *Obermeyer,* 275 Minn. 347, 147 N. W. 2d 358 (1966); *Pawtucket* v. *Parent Teacher's Alliance,* 87 R. I. 364, 141 A. 2d 624 (R. I. Sup. Ct. 1958); *Norwalk Teacher's Association* v. *Board of Education,* 138 Conn. 269, 83 A. 2d 482 (1951). Thus, conduct which would otherwise be constitutionally permissible in

the private employment sector can constitutionally be prohibited in the public employment sector as inconsistent with the public interest in the valid exercise of the State's police power.

The fact that petitioners refer to their conduct as "an endeavor to communicate to the community the nature of their dispute, the reasonableness thereof and solicit the support of the community in an endeavor to convince their employer that their employees have merit to their proposals" (Petitioner's Brief at 11), does not give rise to a First Amendment question where the "endeavor to communicate" was in violation of a valid state law. *Giboney* v. *Empire Storage Co.*, 336 U. S. 490 (1948). In the *Giboney* case, the court held that members of a labor union were properly enjoined from picketing in violation of a state law, even though the picketing involved dissemination of truthful information about a labor dispute. The court reasoned at 502:

> "(I)t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed. See *Fox* v. *Washington,* 236 U. S. 273, 277; *Chaplinsky* v. *New Hampshire,* 315 U. S. 568."

See also *International Brotherhood, etc.* v. *Vogt, Inc.*, 354 U. S. 284 (1957).

That the legitimate distinction between public and private employment is constitutionally permissible is clear from the abundance of case law and statutes prohibiting strikes by public employees. Even where states enacted anti-injunction laws to prevent abuses resulting from its

use in labor disputes, it was held not to be applicable to disputes, between the state or any political subdivision and its own employees. *U. S.* v. *United Mine Workers*, 330 U. S. 258, 272 (1947); *N. J. Turnpike Authority* v. *American Federation of State Employees, supra; Delaware River and Bay Authority* v. *International Organization of Masters, Mates and Pilots, supra.*

Petitioners question the "non-essentiality" of the teachers' function and the State's interest in it when compared with that of a fireman or policeman. The New Jersey Suprme Court in holding that employees of the Delaware River and Bay Authority who operated ferries had no right to strike as public employees, referred to this position as

> "an ill-defined concept of doubtful strength . . . (which) has wisely been rejected, in the cases dealing with the prohibitory policy against strikes by public employees." *Delaware River and Bay Authority, supra,* at 146, 211 A. 2d at 793.

The suspension of the fundamental role of the educational system in any state would clearly be inimical to the state's interest in the education of its young and welfare of its citizenry. Under the circumstances as set forth above, petitioner's argument that a prohibition upon their striking constitutes a violation of rights under the First and Fourteenth Amendments does not present a question which merits review by this Court.

POINT II

The injunctive order was not unconstitutional for overbreadth and vagueness and did not prohibit constitutionally mandated actions.

Petitioners contend that Article I, para. 19 of the New Jersey Constitution granted to petitioners a right to absent themselves from school in order to attend a meeting of the Board of Estimate of Jersey City on February 11, 1970. They argue that such conduct should not have been found violative of the injunctive order issued February 9, 1970 and served upon them on February 10, 1970. Clearly the Scialli group, as officers and members of the Executive Board of the Jersey City Education Association, played an integral role in the strike vote of February 9 and resultant work stoppage. The record of the trial below indicates that, above and beyond the mere presence of certain petitioners at the Board of Estimate meeting during normal school hours, which presence thereby caused absence from school without excuse or explanation, in violation of school regulations, there was considerable independent evidence that a strike was in progress and that the petitioners were participating in the strike.

Petitioner's involvement in such a concerted and unauthorized work stoppage cannot be construed as constitutionally protected conduct under New Jersey Constitution, Art. I, §19.

Officers and members of the Executive Board of the Jersey City Education Association were served on February 10, 1970, with copies of the Order to Show Cause issued by Judge Lora (R. 202-14 to 209-10). The restraining order clearly prohibited the defendants named therein from further participation in the strike. Yet the very

next day, following service upon each named individual, the restraining order was undeniably ignored. Petitioners herein assert that their absence from work on February 11 was a mere exercise of the right to organize, the right of free speech, petition and assembly. This argument is blithely oblivious to the plain truth that an illegal teachers' strike was in progress, and that these petitioners, as well as the great majority of the membership of the Jersey City Education Association, of which these petitioners comprised the officers and Executive Board, were participating in such strike by refusing to attend classes. The fact that the petitioners on February 11, 1970, while they were staying away from classes, as they had done on the two school days previous to February 11, were found to be attending a meeting of the Association cannot reasonably mitigate or even explain why they did not report for work. That the meeting could not have been scheduled for a time outside of the normal school hours cannot be seriously maintained.

In addition, the absence from school of these petitioners, without excuse or explanation on February 11 should be considered in conjunction with other facts surrounding these absences. The petitioners were leaders of the organization which participated in the strike. They absented themselves from work, without explanation, under circumstances which rule out excusable absence. Their claim of constitutional privilege in this respect is ill-founded and does not merit review by this Court.

POINT III

The findings of the trial Court that petitioners had violated the injunctive order was supported by the evidence and presents no constitutional question.

The scope of federal review of a decision of a state court is limited solely to the question of whether *any* supporting evidence was in the trial record. The probative strength of such evidence, or the supporting of such evidence, is not a constitutional issue. *Thompson* v. *City of Louisville,* 362 U. S. 199, 80 S. Ct. 624, 4 L. Ed. 2d 654 (1960); *Williams* v. *Peyton,* 414 F. 2d 776 (4th Cir. 1969); *Cunningham* v. *Maroney,* 397 F. 2d 724, 725 (3rd Cir. 1968), cert. den. 393 U. S. 1045 (1969).

In the case *sub judice* proof of violation of the injunction order was not only submitted by the State but was clearly sufficient to justify the conclusion reached by the Court.

The evidence adduced at trial indicates that on Sunday, February 8, 1970, a meeting of the Jersey City Education Association took place, during which meeting the decision was made to strike the Jersey City Schools the next morning (R. 195-6 to 197-22). Francis McCarthy, Assistant Superintendent of Schools, testified that although the total staff of the Jersey City School System was 1743 members, from February 9 until March 2, 1970, the daily attendance of school personnel varied between 288 and 400 (R. 86-1 to 87-2). The normal rate of teacher absences had been approximately 8 to 10%; the rate of absence between February 9 and March 2, 1970 was abnormally high (R. 89-21 to 91-8). During this period picket lines were observed at several schools. Various officers and members of the Jersey City Education Asso-

ciation were, on February 10, 1970, served with copies of the Order to Show Cause issued by Judge Lynch (R. 202-14 to 209-10). The Order was published in two local newspapers (R. 200-19 to 25). Defendants herein who were not named in the original Order to Show Cause were seen picketing in front of School No. 12 on February 13, 1970 (R. 340-16 to 343-19).

The State submits that the above facts fully support the trial Court's finding of violations of the Order to Show Cause. *In Re William Block et als.*, 50 N. J. 494 (1967); *In Re Ruth M. Buehrer et al.*, 50 N. J. 501 (1967).

There can be no serious doubt that a strike was in progress and that these petitioners, by their unexplained absence from school, were participating in such strike.

Teachers who absent themselves from school subsequent to circumstances which are clearly indicative of a work stoppage, are in effect "on strike". See *Head* v. *Special School District No. One, supra; Prouzan* v. *Board of Education,* 25 Misc. 2d 945, 209 N. Y. S. 2d 966 (Spec. Term 1960), aff'd 12 A. D. 2d 923, 215 N. Y. S. 2d 718 (Sup. Ct. 1st Dept. 1961), aff'd 9 N. Y. 2d 911, 176 N. E. 2d 96, 217 N. Y. S. 2d 86 (Ct. App. 1961).

POINT IV

Each defendant below had adequate notice of the order to show cause.

Counsel for defendants conceded at the trial that those individuals whose names appeared in the original Order to Show Cause had been properly served with the Order (R. 201-8 to 202-2). However, the issue of notice and knowledge of the outstanding injunctive Order was raised and is re-asserted on appeal as to those defendants whose

names did *not* appear on the Order of February 9, 1970, and who were not personally served. The trial Court found that these defendants were sufficiently notified of the existence of the restraining Order, and that the restraint applied to all teachers in the Jersey City School System, by the publication pursuant to direction of Judge Lynch, of full page reproductions of the Order to Show Cause on February 10, 1970, in both the Hudson Dispatch and the Jersey Journal (R. 405-12 to 406-7). Defendants attack this finding.

The Court's conclusion that there indeed was notice was based in part upon the *numerous newspaper articles admitted on the issue of notice* (R. 187-3 to 9), many of which clealy indicate that Jersey City Teachers had been ordered by Judge Lynch not to strike. Also considered was the fact that the Order of Arrest as to the defendants on February 19, 1970, referred to *alleged activities on February 13, 1970,* which *was several days after the original Order that Judge Lynch issued* and was published in the previously mentioned newspapers. Under the circumstances, an inference that the defendants had received *reasonable* notice was not improper.

Apparently, *notice rather than service* of a restraining Order is determinative of a defendant's culpability under the law. Rule 4:52-4 of the Courts of the State of New Jersey specifically provides that:

> "Every order granting an injunction and every restraining order shall set forth the reasons for its issuance . . . and is binding only upon such parties to the action and such of their officers, agents, employees, and attorneys, and upon such persons in active concert or participation with them as receive actual notice of the order by personal service *or otherwise.*" (Emphasis supplied.)

Moreover, in *In Re Ruth M. Buehrer, et al., supra,* the New Jersey Supreme Court apparently recognized that notice, not service of a restraining Order is a pivotal issue in a prosecution for violation of such restraining Order. See also *Cross Co.* v. *United Automobile Workers,* 377 Mich. 202, 139 N. W. 2d 694 (1966); *Hart Cotton Mills, Inc.* v. *Abrams, et al.,* 231 N. C. 431, 578 S. E. 2d 803 (1950). Notice can be established by circumstantial evidence. *Mechanic* v. *Gruensfelder,* 461 S. W. 2d 298 (Mo. 1970). In the instant case, the petitioners apparently are sophisticated and well-educated people who presumably would know that strikes in their profession are prohibited by state law. Certainly the lines of communication were sufficient to swiftly and decisively indicate to them that a strike had been called, since they remained out of school and indeed engaged in picketing. The argument that they had no notice of the restraining Order, in such case, after it had been published in the two most widely read newspapers in the County, implies a certain naivete to these petitioners which does not conform with the circumstances. The Appellate Division cited the case of *Garrigan* v. *U. S.,* 163 F. 16 (7th Cir. 1908), *cert. denied* 214 U. S. 514 (1909) in showing that actual notice may be inferable from the facts. Petitioners cite the case (Brief at 21) as conclusive to the point that notice could not be imputed from the mere fact of the advertisement of the injunctive order in the newspaper publication. However, certain distinguishable points are evident in this case. First, the case refers to an *alleged* publication, thereby raising a question in the court's mind as to the actual existence of such publicity. In addition, the date of the case would also indicate that at that time a newspaper as a reasonable means of notice might be questioned. In the *Garrigan* case a private company had obtained an injunction restraining various trade or-

ganizations and named individuals. Defendant therein was a fireman and substantial proof was admitted indicating that he was, in fact, assisting the police in quelling a riot. Moreover, none of the named defendants who had received service of the Order were ever involved in a violation of the same.

It is submitted that the publication of the Order to Show Cause in two local newspapers, each of county-wide distribution, was a *reasonable means* of providing notice to these defendants and that the finding of the Court that defendants received notice of the Order was proper under the circumstances of the case. Clearly, the court would not be expected to serve the entire membership of the Jersey City Chapter of the New Jersey Education Association with copies of the restraining Order. The court was faced with the dilemma of notifying many hundreds of persons in the shortest possible amount of time in order to stave off what it no doubt considered a threat of imminent injury to the public. In such a case it was neither reasonably possible nor practical to give more adequate notice than that afforded by publication. *Mullane* v. *Central Hanover B. & T. Co.*, 331 U. S. 306, 70 S. Ct. 652, 94 L. Ed. 895 (1949); *State* v. *Standard Oil Co.*, 5 N. J. 281, 308 (1950), aff'd 341 U. S. 428 (1951); *Rudikoff* v. *Byrne*, 101 N. J. Super. 29 (Law Div. 1968).

POINT V

Equal protection of the laws and due process guaranteed by the Fourteenth Amendment were not denied petitioners by the imposition of a fine of $10,000 on the New Jersey Education Association and the Court below was not limited to the maximum fine set forth in N.J.S. 2A:169-4.

The statute relied upon by petitioners in their brief, N.J.S. 2A:169-4, is set forth as follows:

> Except as otherwise expressly provided, a person adjudged a disorderly person shall be deemed to have been guilty of a petty offense and shall be punished by imprisonment in the county workhouse, penitentiary, or jail for not more than 6 months, or by a fine of not more than $500.00, or both.

To limit the amount of fine applicable to an association, the membership of which numbers approximately 1750 in the Jersey City school system alone to a maximum of $500.00 for criminal contempt, is to remove from the courts of this State the power to impose summarily anything but a meaningless and insignificant fine in punishment for contempt where a large group of individuals is involved.

The State submits that the case of *Bloom* v. *Illinois*, 391 U. S. 194 (1967) which is cited in the opinion of the Appellate Division, is dispositive of the issue as to the "serious" or "petty" classification of the offense of criminal contempt, *where there is an imposition of a prison sentence*. In the *Bloom* case, the defendant was convicted in Illinois of criminal contempt and sentenced to *24 months imprisonment* for willfully petitioning to

admit to probate a will falsely prepared and executed after the testator's death. The court held it was error to deny his request for a jury trial, applying the rule that where the legislature has not expressed judgment as to the seriousness of an offense by fixing a maximum penalty (as is the status of the offense of contempt in New Jersey) the seriousness of the offense can be ascertained by looking at the penalty actually imposed. Thus, the Court, recognizing the *sui generis* nature of the offense of criminal contempt and the need to maintain the imposition of a penalty for a violation of the same in the discretion of the trial judge, insisted that a defendant receive the procedural protection of the right to trial by jury where the terms of imprisonment exceeded 6 months. Subsequently, the Court affirmed the summary conviction of a defendant charged with criminal contempt for violating an injunction where he was sentenced to a 6 month-or-less term of imprisonment. *Frank* v. *United States,* 395 U. S. 147 (1968). See also *Cheff* v. *Schnackenberg,* 384 U. S. 373 (1966); (Here the corporation was fined $100,000); *U. S.* v. *Harris,* 367 F. 2d 826 (2nd Cir. 1966); *In re Buehrer, supra.*

The State further submits that the Appellate Division correctly reasoned that the imposition of a fine in excess of $500.00 against a union whose membership ranges in the hundreds, did not render the offense of criminal contempt a "serious" offense within the meaning of *Bloom* v. *Illinois, supra.* As the Appellate Division pointed out, the case of *Rankin* v. *Shanker, supra,* meets this issue head on:

> "[T]he fine, even though sizeable in amount furnishes no valid criterion for the defendants' claim that the contempt charged against them constitutes a serious crime." (295 N. Y. S. 2d at 632-633).

The summay power of the courts to impose a fine is especially crucial in attempting to halt immediately the illegal activities of a union of public employees which are inimical to the public welfare.

The language of the Supreme Court in *United States* v. *United Mine Workers of America, supra,* where it was held that the union had no right to a trial by jury despite a fine of $700,000, is still valid to define for the trial judge a standard to use in his discretion in order to determine the severity of the fine which should be imposed:

> "In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge." *Id.* at 303.

> "But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.

> "It is a corollary of the above principles that a court which has returned a conviction for contempt must, in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, consider the amount of defendant's finan-

> cial resources and the consequent seriousness of the burden to that particular defendant." *Id.* at 304.

Petitioner's argument that the exercise of such discretion is violative of the Equal Protection and Due Process clauses of the Fourteenth Amendment is without merit. Clearly, the imposition of the fine is an action directly related to the preservation of the State's interest in the educational system and the substantial size of such fine is required in order to emphasize the gravity of the harm to the public. See *McGowan* v. *Maryland,* 366 U. S. 420 (1961).

CONCLUSION

For the reasons set forth, the petition for certiorari should be denied.

Respectfully submitted,

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